IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

MFA.No. 263 of 2001(B)

OP(MV.)647/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM DT.25.5.2000.
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APPELLANT: PETITIONER IN THE OP(MV) NO.647/97.

O.K.MOHAMMED . S/O.SULAIMAN, ODUVANGATTIL HOUSE, MANGODE, THRIKKADEERI, OTTAPALAM TALUK BY POWER OF ATTORNEY P.MUHAMMED KUTTY, S/O.MOOSA, RAFEEK MANZIL, NELLAYA , OTTAPALAM TALUK.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS: RESPONDENTSSSSS IN OP. (MV) NO.647/97.
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1. **M.ASHRAF, S./O.ABDUL RAHIMAN, MATTURAL HOUSE, CHULAM VAYAL, KUNNAMANGALAM, KOZHIKKODE , KOZHIKKODE DISTRICT (OWNER AND INSURED OF LORRY NO.KL 11B/6127).**

2. **O.K.KOYA, S/O. HUSSAIN OMMEN KUZHIYIL HOUSE, CHULAM VAYA, KUNNAMANGALAM, KOZHIKKODE (DRIVER OF LORRY NO/KL 11B-6127)**

3. **NEW INDIA ASSURANCE CO. LTD., DIVISIONAL OFFICE, V.K.BUILDING , II FLOOR, CHERUTTY ROAD, KOZHIKKODE (INSURER OF KL 11B/2167 LORRY)**

BY ADV. SRI.M.JACOB MURICKAN - R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/07/2007, ALONG WITH MFA NO. 264 OF 2001 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.Nos.263 & 264 OF 2001

Dated 4th July, 2007

JUDGMENT

Koshy,J.

Appellant in M.F.A.No.263 of 2001 while riding a motor bike with the appellant in M.F.A.No.264 of 2001 as pillion rider met with an accident when a lorry driven by the second respondent and insured by the third respondent insurance company hit the motor bike. The Tribunal found that the accident occurred mainly due to the negligence of the lorry driver as lorry was driven on its wrong side. Since the rider of the motor cycle was not having any driving licence, 25% contributory negligence was attributed on him. The contention raised by the appellant in M.F.A.No.263 of 2001 is regarding the above finding. It is contended that since the accident occurred due to the negligence of the second respondent lorry driver as the lorry was driven on the wrong side, absence of driving licence on the part of the rider of motor cycle is of no consequence. But, he should not have entered the road by riding a motor cycle without a driving licence. If he was having driving licence and experience in driving, the accident could have been avoided. In the above circumstances, we are of the view that attribution of 25% contributory negligence on the rider of the motor cycle cannot

be stated as illegal so as to warrant interference by the appellate court. Both appellants were employed abroad. The rider of the motor cycle who is the appellant in M.F.A.No.263/2001 was employed in a travel agency at Qatar and he produced employment certificate to that effect. According to him, he was getting Qatar Riyals equivalent to Rs.25,000/= per month. Admittedly, the Tribunal found that he was under treatment for five months. Passport and visa entries would show that after four months he left for abroad. Therefore, for loss of earnings, actual loss of salary for four months can be taken. But, if he was employed in Qatar, expenses in Qatar would be higher unlike expenses in the home town. In the above circumstances, we are of the view that for loss of actual earnings Rs.5,000/= can be taken as monthly income and Rs.20,000/= can be assessed as loss of earnings. He was awarded Rs.7,500/= towards loss of earnings. So, the balance will be Rs.12,500/= out of which 25% has to be deducted towards contributory negligence. Therefore, the appellant will be entitled to an additional amount of Rs.9,375/=. It is true that he has sustained serious head injury, but, the evidence would show that he went back to Qatar and continued his employment. Therefore, we are of the view that no enhancement is needed under other heads. The additional amount of Rs.9,375/= shall be deposited by the third respondent insurance company with 8% interest from the date of application till its deposit.

2. Appellant in M.F.A.No.264 of 2001 was the pillion rider. He was employed in Dubai as a tailor. According to him, his monthly income was equivalent to Rs.12,000/=. The Tribunal granted only Rs.6,000/= as compensation for loss of earning taking that he was under treatment for a period of four months taking Rs.1,500/= as the notional income. Even though he was getting Rs.12,000/= at Dubai as tailor, his expense also in Dubai would be correspondingly higher. Considering these facts, we take Rs.3,500/= as the monthly income and for four months he is entitled to Rs.14,000/=. After deducting Rs.6,000/= awarded by the Tribunal balance will be Rs.8,000/=. Out of Rs.8,000/=, Rs.6,000/= should be deposited by the insurer of the lorry, i.e. third respondent insurance company and Rs.2,000/= should be deposited by the owner and rider of the motor cycle, i.e. respondents 4 and 5 in the appeal with 8% interest from the date of application till its deposit.

Both appeals are partly allowed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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